Supreme Court, U.S.
FILED

NOV 12 2001

OFFICE OF THE CLERK

No. 01 771

In The

Supreme Court of the United States

IN RE BETHANY MCBETH-LARRY,

Petitioner.

On Petition For Writ Of Prohibition
Or In The Alternative Mandamus
To The State Of Virginia

PETITION FOR WRIT OF PROHIBITION OR IN THE ALTERNATIVE MANDAMUS

BETHANY MCBETH-LARRY
P.O. Box 2815
Anderson, Indiana 46018
(765) 662-8612

24 pp

11/29/01 THU 17:02 FAX 402 341 8712 COCKLE PRINTING 005

QUESTION PRESENTED

Did the Fredericksburg, Virginia, Department of Social Services violate the mother's civil rights by placing her children for adoption when no criminal charges were proven against her?

11/29/01 THU 17:02 FAX 402 341 8712 COCKLE PRINTING 006

LIST OF PARTIES

Persons against whom relief is sought include:

Commonwealth of Virginia
Virginia Division of the Office of Family and Children of the United States Department of Welfare
Fredericksburg Department of Social Services
Judge of Spotsylvania Juvenile and Domestic Relations Court
Spotsylvania Juvenile and Domestic Relations Court
Cheryl Matthew, Social Worker
Joseph A. Vance, Esq., Attorney for Department of Social Services
Thomas Y. Savage, Guardian ad Litem

11/29/01 THU 17:03 FAX 402 341 8712 COCKLE PRINTING 007

OPINIONS BELOW

The judgment of the Circuit Court for the City of Fredericksburg, Virginia, filed on April 15, 1998, is reprinted in the Appendix at App. 1. The opinion of the Court of Appeals of Virginia, Richmond, decided June 29, 1999, is unpublished and is reproduced in the Appendix at App. 6.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant portion of the First Amendment to the U.S. Constitution includes:

> Congress shall make no law respecting . . . the free exercise thereof . . . to petition the government for a redress of grievances.

Fourteenth Amendment to the U.S. Constitution

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

11/29/01 THU 17:03 FAX 402 341 8712 COCKLE PRINTING 008

STATEMENT OF THE CASE

On April 28, 1997, Appellant was directly indicted by a City of Fredericksburg Grand Jury. The indictment specified a violation of Section 18.2-371.1 without reference to either of the subsections of that section. However, the text of the indictment embodied the precise language of subsection (A), a Class 4 Felony. It embodied nothing of the language of subsection (B), a Class 6 Felony.

On May 9, 1997, Appellant was arraigned and pleaded not guilty "to the indictment." Trial was scheduled for July 9, 1997, without a jury. Trial was subsequently continued to December 2, 1997, on which date the case was tried and Appellant found guilty of a violation of Section 18.2-371.1, without reference to either of the subsections of that section.

Appellant filed on March 9, 1998, a Motion to Reconsider; Trial Court heard argument on the said Motion on the next day. In a Memorandum Opinion and Order dated March 16, 1998, Trial Court denied the Motion and specified that Appellant was guilty of a violation of Section 18.2-371.1, subsection (B).

On April 6, 1998, Appellant was sentenced to one (1) year's imprisonment, entirely suspended on certain terms and conditions; and the Sentencing Order was entered on April 13, 1998.

Notice of Appeal was filed on May 11, 1998.

The Court of Appeals of Richmond, VA reversed the trial court's judgment on June 29th, 1999.

11/29/01 THU 17:03 FAX 402 341 8712 COCKLE PRINTING 009

REASONS WHY THE WRIT SHOULD BE GRANTED

I. THE EVIDENCE WAS INSUFFICIENT TO CONVICT THE PETITIONER OF CHILD NEGLECT.

The justice system in the lower courts has to really justify why a person can just remove a person's children without just cause. There is no reason, and there are enough court documents to substantiate this. The Court of Appeals of Richmond, Virginia, reversed the trial court's judgment on June 29, 1999. "The judgment of a trial court sitting without a jury is entitled to the same weight as a jury verdict and will not be set aside unless it appears from the evidence the judgment is plainly wrong or without evidence to support it." *Martin v. Commonwealth*, 4 Va. App. 438, 443, 358 S.E.2d 415, 418 (1987). See also VA Code Section 18.2-371.1(B).

II. THE COURT SHOULD REVIEW THE EVIDENCE AND RETURN THE CHILDREN TO THEIR MOTHER.

The fact that the birth mother is without a record and that the Supreme Court of Virginia cleared this matter, but the children have been adopted out within the State of Virginia needs to be resolved by this Court. There are no relatives in the State of Virginia. The mother lives in the State of Indiana and has timely filed court documents to have her children returned but to no avail. The State of Virginia has terminated the mother's parental rights without substantial evidence. See the documents in the Appendix.

11/29/01 THU 17:03 FAX 402 341 8712 COCKLE PRINTING 010

CONCLUSION

For the foregoing reasons, the Petitioner would request this Court to review the evidence and grant this writ.

Respectfully submitted,

BETHANY MCBETH-LARRY
P.O. Box 2815
Anderson, Indiana 46018
(765) 662-8612

11/29/01 THU 17:03 FAX 402 341 8712 COCKLE PRINTING 011

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
CITY OF FREDERICKSBURG – FIPS 630

HEARING DATE: April 6, 1998
JUDGE : The Honorable John W. Scott, Jr.

COMMONWEALTH OF VIRGINIA

VS CR97-268

BETHANY JANE MCBETH
7135 LOMMAR DRIVE
WOODFORD, VA 22580

DOB: 7/7/68
SSN: 223-33-3899
SEX: FEMALE

COMMONWEALTH'S ATTORNEY: LABRAVIA JENKINS
DEFENSE ATTORNEY : Mark Murphy

CASE NUMBER	OFFENSE	OFFENSE DATE	CODE SECTION
CR97-268	CHILD NEGLECT (F)	BETWEEN 1/1/97 AND 2/7/97	§18.2-371.1

SENTENCING ORDER

On April 6, 1998, came the Attorney for the Commonwealth, LaBravia Jenkins, and Bethany McBeth, who stands convicted of a felony, to-wit: That during the period between January 1, 1997 and February 7, 1997, in the City of Fredericksburg, BETHANY McBETH, while the parent, guardian or person responsible for the care of

11/29/01 THU 17:04 FAX 402 341 8712 COCKLE PRINTING 012

Anthony Hatcher, a child under 18 years of age, did by a willful act or omission, or refusal to provide any necessary care for the child's health, unlawfully and feloniously cause or permit serious injury to the life or health of such child, against the peace and dignity of the Commonwealth and in violation of Section 18.2-371.1 of the Code of Virginia (1950), as amended, as charged in the Indictment; and came also Mark Murphy, her attorney. In compliance with Section 19.2-165 of the Code of Virginia as amended in 1975, the Court Reporter was sworn.

Whereupon the Court heard the arguments of counsel on the Court's ruling of the Defendant's Motion to Reconsider, previously filed herein, and argued on March 10, 1998.

After hearing the argument of counsel, the Court stands on its finding of guilty in this case, charging the Defendant with child neglect.

The Probation Officer of this Court, to whom this case has been previously referred for investigation, filed the pre-sentence report with the Court and both counsel prior to today's hearing, in accordance with §19.2-299 of the Code of Virginia. The report of the Probation Officer is hereby filed as part of the record in this case and both parties waived appearance of the probation officer.

Pursuant to the provisions of Code § 19.2-298.01, the Court has considered and reviewed the applicable discretionary sentencing guidelines and the guidelines worksheets. The sentencing guidelines worksheets and the written explanation of any departure from the guidelines are ordered filed as a part of the record in this case.

11/29/01 THU 17:04 FAX 402 341 0712 COCHLE PRINTING 013

Whereupon the Court taking into consideration all the evidence in the case, the report of the Probation Officer, and such additional facts as were presented by the Defendant, and it being demanded of the Defendant if anything she had or knew to say why judgment should not be pronounced against her according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the Defendant is guilty of felony child neglect (offense date: 1/1/97-2/7/97), as charged in the Indictment, and she is hereby sentenced to confinement in the Virginia Department of Corrections penal system for a period of one (1) year.

All time (1 year) is hereby suspended conditioned upon the following:

Good behavior. The Defendant shall be of good behavior for a period of ten (10) years upon her release from confinement.

Community-based Corrections System Program. The Defendant shall perform twenty (20) hours of community service through the Community Based Probation Program.

Supervised probation. NA.

Post-release supervision. NA.

Costs. The Defendant shall pay costs of $822.50 within ninety (90) days of his release from incarceration unless a schedule is established by the Probation Officer (Community Based Probation Program) and communicated to the Clerk within ninety (90) days of his release.

Restitution. NA.

11/29/01 THU 17:04 FAX 402 341 8712 COCKLE PRINTING 014

Credit for time served. The Defendant shall be given credit for time spent in confinement while awaiting trial pursuant to Code § 53.1-187.

It is ordered that the Defendant shall cooperate fully with the Department of Social Services with the State of Virginia, or with the State of Indiana, to establish a counseling and/or visitation program with the goal of reuniting her with her children as a family unit.

It is further ordered that the Defendant shall fully cooperate with-proceedings of the Juvenile and Domestic Relations Court.

The Court certifies that at all times during the trial of this case, the Defendant was personally present and her attorney was likewise personally present and capably represented the Defendant.

The Defendant shall provide a blood sample forthwith for DNA analysis pursuant to Virginia Code Section 19.2-310.2 et seq. as a condition of her suspended sentence under the supervision of his/her probation officer. The withdrawal of blood may be performed at or under the auspices of the Rappahannock Regional Jail or at such other appropriate facility as the probation officer may direct, in the manner prescribed by law.

The Defendant was advised of her right to appeal.

The Defendant is remanded to the custody of the Sheriff.

SENTENCING SUMMARY:

TOTAL SENTENCE IMPOSED: 1 year

TOTAL SENTENCE SUSPENDED: 1 year

11/29/01 THU 17:04 FAX 402 341 8712 COCKLE PRINTING 015

TOTAL SENTENCE TO SERVE: 0

Entered this 13th day of April, 1998.

/s/ John W. Scott, Jr., JUDGE
JOHN W. SCOTT, JR.

11/29/01 THU 17:04 FAX 402 341 8712 COCKLE PRINTING 016

UNPUBLISHED
In the Court of Appeals of Virginia
Argued at Richm nd, Virginia

BETHANY JANE MCBETH

v.

COMMONWEALTH OF VIRGINIA

Record No. 1096-98-2
Decided: June 29, 1999

Present: Judges Benton, Willis and Senior Judge Cole

FROM THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG, John W. Scott, Jr., Judge

Reversed.

COUNSEL

(Jeffrey Garth Edmunds, on brief), for appellant. Appellant submitting on brief.

Marla Graff Decker, Assistant Attorney General (Mark L. Earley, Attorney General; Donald E. Jeffrey, III, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION* BY JUDGE JERE M. H. WILLIS, JR.:

On appeal from her conviction of child neglect, in violation of Code § 18.2-371.1(B), Bethany Jane McBeth contends that the evidence was insufficient to support her conviction. We agree and reverse the judgment of the trial court.

On appeal, we review the evidence in the light most favorable to the Commonwealth,

---

*Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

11/29/01 THU 17:08 FAX 402 341 8712 COCHLE PRINTING 017

> granting to it all reasonable inferences fairly deducible therefrom. The judgment of a trial court sitting without a jury is entitled to the same weight as a jury verdict and will not be set aside unless it plainly appears from the evidence that the judgment is plainly wrong or without evidence to support it.

Martin v. Commonwealth, 4 Va. App. 438, 443, 358 S.E.2d 415, 418 (1987).

On February 7, 1997, a social worker brought Anthony Hatcher, McBeth's son, to Dr. Pamela Mancini for treatment. Dr. Mancini testified that Anthony appeared unkempt and dehydrated and that she observed several burns on his buttocks. She could not tell whether the injuries were actual burns or were abrasions caused by the child's being struck by a cord or rope. She testified that the wounds were serious, but not life-threatening, and had occurred within two weeks prior to the medical visit. Anthony was admitted to the hospital for treatment. No evidence of dehydration, infection, or other ailment was introduced at trial. No evidence disclosed how social services came to be involved in the case.

Anthony's babysitter testified that the injury had occurred on or about February 1, 1997, while Anthony was in her care. Her twelve-year-old son had caused Anthony to sit on the electric space heater, the dimensions of which matched the pattern of his burns. The babysitter phoned McBeth at work to tell her of the injury, but no evidence disclosed that McBeth or the babysitter discussed the severity of the burns. McBeth applied an ointment to the burns, but sought no medical

11/29/01 THU 17:05 FAX 402 341 8712 COCKLE PRINTING 004

care because of the expense, the consequences of taking time off work, and her fear that Social Services would become involved.

Code § 18.2-371.1(B) provides:

> Any parent, guardian, or other person responsible for the care of a child under the age of eighteen whose willful act or omission in the care of such child was so gross, wanton and culpable as to show a reckless disregard for human life shall be guilty of a Class 6 felony.

The trial court found that:

> Even if the acts of [McBeth] did not directly cause the injuries to her child, her frequent and continued usage of this baby-sitter given the continuous series of injuries or "accidents" that were sustained by her child while in the sitter's care were so willful, wanton and culpable as to show a reckless disregard for human life.

McBeth admitted that Anthony spent a great deal of time at the babysitter's home. While the trial court examined the cumulative effects of all the child's injuries, there was little evidence as to which injuries (except the burns) had occurred in the babysitter's home. No evidence established that McBeth left Anthony in the babysitter's care following his burns or that he suffered significant other injuries, while in the babysitter's care, either before or after the burns.

The Commonwealth argues that McBeth's failure to obtain proper medical attention for Anthony, following his burns, supports her conviction. We disagree. Plainly, McBeth's response to Anthony's serious injuries was negligent and highly derelict. However, she cannot be held to

11/29/01 THU 17:03 FAX 402 341 8712 COCKLE PRINTING 019

a level of understanding beyond her education and experience. The doctor perceived a need for medical treatment. There was no evidence that a person of McBeth's education and experience should have had the same perception. The evidence established that Anthony's injuries, though serious and painful, were not life-threatening. Under these circumstances, McBeth's approach to Anthony's injuries was not "so gross, wanton or culpable as to show a reckless disregard to human life." Code § 18.2-371.1(B).

The judgment of the trial court is reversed.

Reversed.

11/29/01 THU 17:05 FAX 402 341 8712 COCKLE PRINTING

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday *the* 29th *day of* June, 1999.

Bethany Jane McBeth, Appellant,

against Record No. 1096-98-2
Circuit Court No. CR97-268

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Fredericksburg

Before Judges Benton, Willis and Senior Judge Cole

For reasons stated in writing and filed with the record, the Court is of opinion that there is error in the judgment appealed from. Accordingly, the judgment is reversed and annulled.

It is ordered that the trial court allow counsel for the appellant a fee of $725 for services rendered the appellant on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses.

This order shall be certified to the trial court.

A Copy,

Teste:

Cynthia L. McCoy, Clerk
By: /s/ Marty K.P. Ring
Deputy Clerk

11/29/01 THU 17:05 FAX 402 341 8712 COCKLE PRINTING 021

VIRGINIA:

IN THE CIRCUIT COURT OF THE
COUNTY OF SPOTSYLVANIA

IN RE: ANTHONY AND JERREKIA HATCHER

FREDERICKSBURG DEPARTMENT OF SOCIAL SERVICES,	Plaintiff,
v.	Case No.: CH01-123
MYRON LARRY,	Defendant.
and	
FREDERICKSBURG DEPARTMENT OF SOCIAL SERVICES,	Plaintiff,
v.	Case No.: CH01-114
BETHANY LARRY,	Defendant.

ORDER

This cause came to be heard on the second day of July 2001 upon the motion to dismiss filed by the Fredericksburg Department of Social Services; and was argued before the court.

And it appearing proper to do so, it is hereby ADJUDGED, ORDERED and DECREED that the appeals filed in this case are hereby dismissed, the court finding that the appeals were not timely filed in writing pursuant to the time limit set forth in Virginia Code Section 16.1-296.

11/29/01 THU 17:06 FAX 402 341 8712 COCKLE PRINTING 022

And there being nothing remaining pending in this court, this matter is hereby remanded to the Spotsylvania Juvenile and Domestic Relations Court for further proceedings consistent with the appropriate code sections.

ENTER:

/s/ William Ledbetter, Jr., JUDGE

DATE: July 2, 2001

I ASK FOR THIS:

/s/ Joseph A. Vance, IV
Joseph A. Vance, IV
Counsel for The Fredericksburg Department of Social Services
710 Princess Anne Street, Suite 1
Fredericksburg, Virginia 22401
(540) 373-2510
(540) 373-2383 facsimile

SEEN AND EXCEPTED TO:

Both of these persons were present and objected to this dismissal. Endorsements waived because the parties were distraught.

_____

Myron Larry

_____

Bethany Larry

_____

12/29/01 THU 17:08 FAX 402 341 8712 COCKLE PRINTING 023

To: Judge Lewis
Commonwealth of Virginia
Spotsylvania Juvenile and Domestic Relations Court –
Juvenile Division
Judicial Center – Building B – 2nd Floor
Spotsylvania, VA 22553

There were hearings held on the 29th day of January, 2001 in the Spotsylvania Juvenile and Domestic Relations Court. A decision was perhaps made at that time not in favor of Bethany J. Larry nor Myron Larry. To date, we have not received anything from the courts in writing to that effect. At this time, this 23rd day of February, 2001, we, Bethany J. Larry and Myron Larry would like this letter to serve as an official appeal to the case no. 177JJ021477-09-00, J21477-03-01. 177JJ21477-06-00. We have requested official forms to file this appeal in a timely manner. The law allows (30) thirty days to do so. This is the twenty-fifth day by the courts calendar. We have not received forms so we submit these and ask that your court accepts this for its full intentions which is to appeal any termination of residual parental rights, also, any adverse decision to Mr. And Mrs. Larry on the outcome of the 29th day of January, 2001 court hearings. We have also sent certified mail to and non-certified mail to the court with no response to inform the court of our position, and a doctor's letter not allowing Mr. Larry to travel during those court dates, also with no response. These letters were sent in a timely manner. The first was sent the 22nd day of January, 2001 – postal service tracking 37000-0520-0013-4005-7226 which was received prior to the court date of the 29th day of January, 2001 hearings. We also, with respect, submit at this time, copies of

11/29/01 THU 17:06 FAX 402 341 8712 COCKLE PRINTING 024

cause no. 48C01-0101-MI that with respect we have submitted to the Madison County Courts concerning Anthony Larry and Jerrekia Hatcher petition in suite affecting the parent-child relationship so again we ask that the courts of Virginia honor this writing and accept this as an appeal to the decisions of January 29th, 2001 and that orders be set in motion by said court and jurisdiction be placed with the state of Indiana under the Uniform Interstate Family Custody Act. Again, thank you very much for your attention to this pressing matter.

Sincerely,

/s/ Myron Larry
/s/ Bethany Larry
Myron and Bethany Larry

cc:

Attorney Donald Hurst
Judge Lewis
Senior Judge Cole
Judge Benton
Judge Willis

11/29/01 THU 17:06 FAX 402 341 8712 COCKLE PRINTING 025

STATE OF INDIANA)
) ss:
COUNTY OF MADISON)

IN THE MADISON COUNTY CIRCUIT COURT, 2001 TERM
CAUSE NO.
48C01-0101-MI-___

IN THE MATTER OF:

ANTHONY LARRY and
JERRIKIA HATCHER

BETHANY LARRY and
MYRON LARRY, .
Petitioners

VS.

COMMONWEALTH OF VIRGINIA, VIRGINIA DIVISION OF THE OFFICE OF FAMILY AND CHILDREN OF THE UNITED STATES DEPARTMENT OF WELFARE, FREDERICKSBURG DEPARTMENT OF SOCIAL SERVICES, JUDGE, SPOTSYLVANIA JUVENILE & DOMESTIC RELATIONS COURT, CHERYL MATTHEW, JOSEPH A. VANCE, ESQ., STACEY DIETZEN AND, THOMAS Y. SAVAGE
Respondents

TEMPORARY RESTRAINING ORDER AND ORDER SETTING HEARING FOR TEMPORARY ORDERS

On January 29, 2001, Petitioners presented the application for temporary order to the Court.

After examination of Petitioner's pleadings, the Court finds that Petitioner is entitled by law to a temporary injunction and that if Respondents' are not immediately restrained from committing the acts specified

11/29/01 THU 17:08 FAX 402 341 8712 COCKLE PRINTING 026

herein, Respondents will commit the prescribed acts before there may be notice and hearing on the temporary injunction.

The Court, therefore, ORDERS that the Clerk of this Court forthwith issue a temporary restraining order restraining Respondents, and Respondents are immediately restrained by these presents from the following:

That the Virginia Division of Family and Children cease and desist in its attempt to terminate the parental rights of the Petitioners.

The Judge of the Spotsylvania Juvenille and Domestic Court order personal and subject matter jurisdiction to Indiana under the Uniform Interstate Family Custody Act., Ind. Code, 31-17-1-1, et pas.

That the Commonwealth of Virginia cease to interfere with the relationship between the Petitioners and their Children.

That the Virginia Division of the Office of Family and Children of the United States Department of Welfare stay all adoption proceedings now pending.

The Court ORDERS that this restraining order shall take immediate effect and shall remain in full force and effect until the Court makes further order or the restraining order has expired by operation of law. The Court further ORDERS that the restraints are binding upon Respondents, on Respondents' agents, servants, and employees; and on those persons actively concerting or participating with them who actually receive notice of this order by being personally served or otherwise. The Court waives the requirement of a bond.

11/29/01 THU 17:07 FAX 402 341 8712 COCKLE PRINTING 027

That a hearing will be had to determine whether the Court should order its temporary restraining order to be made into a permanent injunction pending further order of the Court, and whether the Court should further order such additional relief as pleaded for or as the Court deems necessary for the safety and welfare of the children.

The Court FURTHER ORDERS that any person who is over the age of 18 years, not a party herein or having an interest in its outcome may make service of any citation, notice, or process herein.

SO ORDERED ON THIS THE ___ DAY OF ___, 2001.

HON. FREDRICK SPENCER, JUDGE
Madison Circuit Court

Dist:
Virginia Division of Family & Children
Spotsylvania J & DR Court
Joseph A. Vance, Esq.
Stacey Dietzen
Thomas Savage
Donald H. Hurst

11/29/01 THU 17:07 FAX 402 341 8712 COCKLE PRINTING 026